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March 4, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
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Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT SB 12 (BOWEN) SPAM E-MAIL (ITEM NO. 16, AGENDA OF MARCH 4, 2003)

Item No. 16 on the March 4, 2003 agenda is a motion by Supervisor Knabe to support SB 12 (Bowen), legislation that would revise current provisions and add new penalties regarding unsolicited commercial e-mail advertising, referred to as "spam", send letters to the County's legislative delegation in support of SB 12 and, direct the County's legislative advocates in Sacramento to pursue its enactment.

Existing law (Chapter 1 of Part 3 of Division 7 of the Business and Professions Code) prohibits a person or entity from e-mailing unsolicited advertising material unless a toll-free telephone number or a valid sender-operated return e-mail address is provided that permits the receiver to notify the sender not to e-mail any further unsolicited documents. Such e-mail is also required to contain a heading of "ADV:" or "ADV: ADLT," as specified.

SB 12 would remove these provisions and instead prohibit sending any spam e-mail from California or to a California electronic mail address. Should these provisions be invalidated the bill's alternative provisions would take effect. The alternative provisions would require the spam sender to maintain a functioning return e-mail address to enable the receiver to notify the sender to stop such advertisements and to include a notice of this in each e-mail. The alternative provisions would also prohibit a person from initiating transmission of spam either from California or to a California e-mail address under certain circumstances and would require commercial e-mail advertisements include "ADV:" or "ADV:ADLT" in the title of the e-mail, depending upon the content of the message. The alternative provisions would make it unlawful for a person to sell or provide a list of e-mail addresses for commercial e-mail solicitations from California or to

a California e-mail address. Under the bill's provisions, the recipient can be considered to be an employer who provides, or has control over, e-mail addresses used by its employees. In addition, SB 12 would authorize the recipient of spam to initiate legal action to recover the greater of actual damages or \$500 per individual violation and reasonable costs and attorney's fees. The court may increase the award to up to triple this amount if the violation was determined to be willful or knowing.

The Department of Consumer Affairs is supportive of SB 12, and there is no registered support or opposition to the bill at this time. SB 12 was introduced on December 2, 2002 and was referred to the Senate Committee on Insurance on January 27, 2003. No hearing date has been set.

Two other bills have been introduced that address spam e-mail:

- **AB 567 (Simitian)** revises some of the provisions in existing law and would authorize the recipient of spam e-mail that violates existing provisions to bring legal action to recover actual damages or \$1,000, whichever is greater, for each violation.
- **SB 342 (Florez)** would expand the requirements for sending spam e-mail by specifying that the advertisement include the sender's identity, postal address, and e-mail address or telephone number and permit the recipient to notify the sender to stop sending any further unsolicited materials to the e-mail address or addresses specified by the recipient.

On January 11, 2000 your Board adopted the Federal Legislative Agenda which included a policy to support proposals which protect consumers from unsolicited commercial electronic mail ("spamming"). **Therefore, support of SB 12 or any other legislation prohibiting spam e-mail is consistent with existing County legislative policy.**

DEJ: GK
MAL: DDN:JF:ib

c: Executive Officer, Board of Supervisors
County Counsel
Department of Consumer Affairs